

REMARKS/ARGUMENTS

Claims 1-8 are currently pending in the above-identified application. Claims 1 and 4 have been amended. Support for these amendments is found throughout the specification including, for example, at paragraph 0017. As such, no new matter is added by these amendments. Claims 9-15 have been canceled without prejudice to Applicants' right to prosecute the subject matter of the claims in a related application.

Information Disclosure Statement

It is stated in the Office action that the IDS filed on September 10, 2004, fails to comply with 37 CFR §§ 1.97 and 1.98. Applicants submit herewith a Supplemental IDS in compliance with 37 CFR §§ 1.97 and 1.98 and MPEP § 609, Forms PTO/SB/08A & B and legible copies of all foreign patents and non-patent literature documents not previously considered and request the Examiner to consider all the references on the merits.

Priority

It is stated in the Office action that the priority information in the application as filed is inconsistent with the priority information of record in the cited priority documents. The domestic priority information has been amended to make it consistent with the USPTO records, including priority documents that were cited and incorporated by reference, and to which priority claim was properly and timely made in the application as filed. As such, the amended priority claim merely addresses typographical errors by adding and/or updating the current status of the parent applications identified in the application as filed. No new matter has been added. Applicants also submit herewith a Supplemental Application Data Sheet indicating amendments to the domestic priority information.

Objections to the Specification

The abstract is objected to as lacking a concise statement of the claimed invention. The abstract has been amended as suggested by the Examiner. Removal of the objection is requested.

The title is objected to as lacking a clear description of the claimed invention. The title has been amended to more clearly reflect the claimed subject matter. Removal of the objection is requested.

The Examiner has objected to the use of trademarks in the current application. The specification has been amended to more clearly distinguish the proprietary nature of trademarks used therein. Removal of the objection is requested.

The Examiner has objected to the specification under 37 C.F.R. 1.75(d)(1) and MPEP § 608.01(o) as failing to provide proper antecedent basis for the claimed subject matter. Applicants are unclear as to the basis of this objection, as the embodiments cited by the Examiner are supported throughout the specification, including, for example, by originally filed claims 9-15. Originally filed claims are considered part of the specification. Nevertheless, claims 9-15 have been canceled herein, as set forth in detail below. As such, removal of the objection is requested.

Drawings

The drawings are objected to under 37 C.F.R. 1.83(a) as failing to show every feature of the invention specified in the claims. Applicants point out, however, that while supported throughout the specification, claims 9-15, which are directed to the embodiments forming the basis of this rejection, have been canceled herein. As such, the objection is rendered moot. Removal of the objection is respectfully requested.

Rejections under 35 U.S.C. §102

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bergersen (United States Patent No. 4,330,272). The rejection is traversed in part and overcome in part.

It is alleged that Bergersen '272 discloses a dental appliance comprising a polymeric shell in the shape of an arch having cavities shaped to receive and reposition teeth from a first orientation to a successive orientation and a wire mounted on the polymeric shell to span at least a portion of the arch of the polymeric shell. While Applicants respectfully disagree with the rejection, claim 1 has been amended in order to advance prosecution of the current application. Such amendments are made to clarify the distinctions with the cited reference and are not intended to infer agreement with the rejections by the Examiner, and Applicants reserve the right to pursue claims of similar scope in a related application. In particular, claim 1 has been amended to clarify that the polymeric shell comprises at least one layer of polymeric material having a first state where the appliance is held onto the teeth and a second state where the appliance may be removed from the teeth.

As such, the failure of Bergersen '272 to teach each and every element found in current claim 1, and corresponding dependent claim 3, precludes a finding of anticipation. Accordingly, removal of the rejection of claims 1 and 3 under 35 U.S.C. 102(b) is respectfully requested.

Claims 1 and 2 are rejected under 35 U.S.C. §102(b) as being clearly anticipated by Martz (United States Patent No. 4,793,803). The rejection is traversed in part and overcome in part.

It is alleged stated in the Office action that Martz discloses a dental appliance comprising a polymeric shell in the shape of an arch having cavities shaped to receive and reposition teeth from a first orientation to a successive orientation and a wire embedded in the polymeric shell to span at least a portion of the arch of the polymeric shell. While Applicants respectfully disagree with the rejection, claim 1 has been amended in order to advance prosecution of the current application, as set forth above. Claim 1 has been amended to clarify that the polymeric shell comprises at least one layer of polymeric material having a first state where the appliance is held onto the teeth and a second state where the appliance may be removed from the teeth. This element is missing from the teachings of Martz. Accordingly, removal of the rejection of claims 1 and 2 under 35 U.S.C. 102(b) is respectfully requested.

Claims 1, 2, and 9 are rejected under 35 U.S.C. §102(b) as being clearly anticipated by Bergersen (United States Patent No. 5,203,695). The rejection is traversed in part and overcome in part.

It is alleged that Bergersen '695 discloses a generally horseshoe shaped clear flexible resilient plastic wire-imbedded orthodontic appliance for an upper arch or a lower arch of a patient that anticipates the subject matter of claims 1, 2, and 9. Without conceding the correctness of the rejection and while preserving the right to pursue claims of a similar scope in a related application, Applicants have amended claim 1 and canceled claim 9 in order to expedite prosecution of the current application. As set forth above, claim 1 has been amended to clarify that the polymeric shell comprises at least one layer of polymeric material having a first state where the appliance is held onto the teeth and a second state where the appliance may be removed from the teeth.

As such, Bergersen '695 fails to teach each and every element found in current claim 1, as is required for a finding of anticipation. Accordingly, removal of the rejection of claims 1, 2 and 9 under 35 U.S.C. 102(b) is respectfully requested.

Rejections under 35 U.S.C. §103

Claims 4-8, 10-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Martz. Applicants respectfully traverse the rejection.

It is alleged that Martz discloses the invention essentially as claimed except for specifying that there are a first appliance, one or more intermediate appliances, and a final appliance (see col. 5, lines 4-14). It is further alleged that the number of appliances provided would have been an obvious matter of choice to one skilled in the art depending on the amount the teeth need to be moved and the number of steps required to move them.

However, without conceding the correctness of the rejection and while preserving the right to pursue claims of a similar scope in a related application, Applicants have amended claim 4 and canceled claims 10-15 in order to expedite prosecution of the current application and without conceding the correctness of the rejection. Applicants preserve the right to pursue the

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subject matter in a related application. Claim 4 has been amended to clarify that the polymeric shell comprises at least one layer of polymeric material having a first state where the appliance is held onto the teeth and a second state where the appliance may be removed from the teeth.

As such, Martz fails to teach each and every element found in current claim 4, and corresponding dependent claims 5-8, as is required for a finding of obviousness. Accordingly, removal of the rejection of claims 4-8, 10-15 under 35 U.S.C. 103(a) is respectfully requested.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 206-467-9600.

Respectfully submitted,

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Michael T. Rosato
Reg. No. 52,182

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 206-467-9600
Fax: 415-576-0300
Attachments
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